IN THE HIGH COURT OF JHARKHAND AT RANCHI
Misc. Appeal No.389 of 2019

The Oriental Insurance Co. Ltd., Branch Office at Hazaribagh, Club Road, Jai Petrol Pump, P.S. Sadar, P.O. Hazaribagh, District Hazaribagh through Divisional Manager, Divisional Office No.1, Tiwary Enclave, near Lalpur Chowk, Circular Road, P.O. and P.S. Lalpur, District Ranchi represented through its Dy. Manger and Incharge T.P. Hub, Ranchi the Oriental Insurance Company Ltd., Probodh 3rd Floor, S.N. Ganguly Road, Main Road, Ranchi, P.O. Ranchi, P.S. Kotwali, District Ranchi Jharkhand.

...... …... **Appellant**

Versus

1. Smt. Sharda Devi, wife of Late Arun Kumar
2. Sweta Agarwal, Daughter of Late Arun Kumar
3. Mohit Ranjan, son of Late Arun Kumar
4. Kumar Nirav, son of Late Arun Kumar
5. Smt. Jhalo Devi, wife of Late Bhim Lal

All are permanent resident of East Gola Road, Ward No.19, P.O. and P.S. Lohardaga, District Lohardaga, presently residing at Bhim Nivas, Moti Street, Ratu Road, P.O. Hehal, P.S. Sukhdeo Nagar, Ranchi, District Ranchi.

….. …. Applicants/ Respondents

6. Prabhu Dayal Singh, son of Sri Nageshwar Singh, resident of village Kutti Rengrania, P.O. Jbara, P.S. Simaria, District Chatra

….. …. Opposite Party No.1/ Respondent

CORAM: HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellant	:	Mr. Ganesh Chandra Jha, Advocate
For the Respondents	:	Mr. Arvind Kumar Lall, Advocate

C.A.V. on: 19/11/2024 **Pronounced on:03/12/2024**

J U D G M E N T

1. The instant Miscellaneous Appeal has been preferred against the award dated 27.02.2019 passed by the learned P.O., M.A.C.T., Ranchi in Motor Accident Claim Case No.114 of 2014, whereby the learned Tribunal has directed the appellant-Insurance Company to pay the compensation amount of Rs.74,64,773/- to the claimants along with interest @ 9% per annum from the date of admission i.e.04.06.2014 till its realization within 30 days from the date of the judgment/ Award.

2. The brief facts leading to this Miscellaneous Appeal are that on 23.02.2014 the deceased along with his relative had left Lohardaga to Kurtha, Bihar by his own car bearing registration NO.JH01AX-3183. When he reached near village Jogiadih (Lamra) about 20km from Lawalong Police Station at Chandwa-Dobhi National Highway, the truck bearing registration No.JH02L-6294, which was driven by its driver rashly and negligently came and dashed to the car of deceased Arun Kumar, as a result of which, all the occupants of the car sustained grievous injury and among them Arun Kumar succumbed to injuries at Sadar Hospital, Chatra and another injured Dwarika Prasad also died during treatment at RIMS. The FIR of this incident was lodged as Lawalong P.S. Case No.08 of 2014 on 23.02.2014 against the driver of the offending truck under Sections 279, 337, 338, 304A and 427 of the Indian Penal Code. The Investigating Officer after concluded the investigation filed the charge-sheet against the driver of the truck, namely, Md. Sohail Akhtar under very those sections. The wife, daughter, two sons and mother of the deceased, namely, Arun Kumar had filed the claim petition with these averments that the deceased was 57 years 3 months old on the date of accident and he was getting salary Rs.69,360/- per month. The offending truck was insured by opposite party No.2-The Oriental Insurance Company Limited, hence, the compensation of Rs.1 crore was claimed.

3. Despite service of notice, opposite party No.1- the owner of the offending truck did not appear and the proceeding of claim petition was proceeded *ex-parte*.

4. The opposite party No.2-The Oriental Insurance Company Limited in its written statement has stated that the offending truck was insured by the

Oriental Insurance Company Limited bearing Policy No.332302/31/2014/3473 and the same was valid from 01.02.2014 to 31.01.2015 subject to the terms and conditions and the restrictions and limitations as laid down in the Insurance Policy. The alleged accident was in collision with the two vehicles i.e. the offending truck bearing registration No.JH02L-6294 and the car bearing registration No.JH01AX-3183 on account of composite negligence of both the drivers. The amount of compensation should have been apportioned in ratio of 50:50. The owner and the insurer of the car has not been impleaded party in this claim petition while they were necessary and proper party. As such, this claim petition is bad for non-joinder of necessary parties. The age, income and occupation of the deceased has not been admitted, the same is to be proved by adducing the evidence by the claimants. The quantum of compensation claim is excessive and arbitrary and for the same the claimants are not entitled.

5. The learned Tribunal has framed altogether seven issues, which read as under:

> *"Issue No.1:- Whether the claim application as filed is maintainable?*
> *Issue No.2:- Whether applicants have valid cause of action for the case?*
> *Issue No.3:-Whether death of the deceased namely Arun Kumar resulted to the alleged vehicular accident caused due to rash and negligent driving of the alleged offending vehicle Truck bearing registration No.JH-02L-6294?*
> *Issue No.4:- Whether there is composite negligence of the driver of the Car involved in the accident, if yes to what extent?*
> *Issue No.5:- Whether insured/ owner of the alleged offending vehicle Bolero Jeep bearing registration No.JH-10T-9872 has violated any of the terms and conditions of the insurance policy?*
> *Issue No.6:- Whether applicants are entitled for compensation as claimed, if yes, against whom and to what extent?*
> *Issue No.7:- To what relief or reliefs, if any, the applicants are entitled to?*

6. On behalf of the claimants, in oral evidence examined **A.W.-1, Smt. Sharda Devi and A.W.-2, Bipin Kumar** and in documentary evidence filed

Ext. 1- Certified Copy of FIR vide Lawalong P.S. Case No. 08/14, dated 23.02.14 against driver of the alleged offending vehicle Truck registration No. JH-02L-6294 for the offence u/s 279, 337, 338, 427 and 304A of IPC. Ext. 2 -Certified copy of Charge Sheet vide charge sheet No. 13/14, dated 30.04.14 against driver namely Md. Sohail Akhtar driving the alleged offending vehicle Truck for the offence u/s 279, 337, 338, 304A & 427 of IPC. Ext. 3-Photo copy of Postmortem Report of the deceased namely Arun Kumar vide P. M. report dated 23.02.14, Sadar Hospital, Chatra. Ext. 4- Photo copy of Certificate of Registration for the offending vehicle Truck registration No. JH-02L-6294 in the name of Prabhu Dayal Singh, O.P. No. 1. Ext.5- Photo copy of Insurance Policy for the alleged offending vehicle Truck registration No. JH-02L-9264 in the name of Prabhu Dayal Singh, O. P. No.1, issued from The Oriental Insurance Co. Ltd., O.P. No. 2 vide Policy No. 332302/31/2014/3473 valid for the period from 01.02.14 to 31.01.15. Ext. 6- Photo copy of Driving license of charge sheeted driver namely Sohail Akhtar vide D. L. No. 445/06 issued on 16.01.06 to drive LMV Professional and allowed to drive HMV with effect from 06.11.07 renewed and valid up to 11.06.15. Ext. 7- Photo copy of Goods Carriage Permit for the offending vehicle Truck registration No. JH-02L-6294 in the name of Prabhu Dayal Singh, O.P. No. 1 valid for the period from 20.12.09 to 19.12.14. Ext.8- Detail of the salary of the deceased namely Arun Kumar, Assistant Profession for the month of December 2013, January 2014 and February 2014 issued under signature of Principal B. S. College, Lohardaga. Ext. 8/1- Certificate dated 01.04.14 for service and date of birth of the deceased issued under signature of Professor In-charge B. S.

College, Lohardaga. Ext. 9- ITR-V Acknowledgement for Assessment Year 2012 along with Form No. 16 submitted by the deceased namely Arun Kumar to the Income Tax Department. Ext. 9/1- Income Tax Return for the Assessment Year 2012-13 submitted by the deceased namely Arun Kumar. Ext. 9/2- Income Tax Return for the Assessment year 2013-14 submitted by the deceased namely Arun Kumar. Ext. 10- Original copy of marks sheet of the deceased namely Arun Kumar issued from Bihar School Examination Board for Matriculation Examination 1972. Ext. 10/1- Attested photo copy of Certificate of Bachelor of Arts in the year 1976 of the deceased namely Arun Kumar issued from Ranchi University, Ranchi. Ext. 10/2- Attested photo copy of Certificate of Master of Arts in the year 1979 of the deceased namely Arun Kumar issued from Ranchi University, Ranchi. Ext. 10/3- Attested photo copy of Certificate of Bachelor of Laws in the year 1980 of the deceased namely Arun Kumar issued from Ranchi University, Ranchi. Ext. 10/4- Photo copy of Certificate for passing Doctor of Philosophy (Faculty of Humanities) Examination in the month of January 2012 by the deceased namely Arun Kumar issued from Ranchi University, Ranchi.

7. The learned Tribunal after hearing the rival submissions of the learned counsel for the parties, passed the impugned award on 27.02.2019 directing the Insurance Company to pay the amount of compensation Rs.74,64,773/- to the claimants along with interest @ 9% per annum from the date of admission i.e. 04.06.2014 till its realization within 30 days from the date of the judgment/ Award.

8. Aggrieved from the impugned award dated 27.02.2019, the instant

Miscellaneous Appeal has been directed on behalf of the appellant- The Oriental Insurance Company Limited on the ground that as per the averments made in the claim petition, the deceased after his death has left his widow, one daughter, two sons and mother. The daughter Sweta Agarwal on the date of accident was major and married and residing in her in-laws house and was not dependent. The son Mohit Ranjan was 31 years old on the date of accident and working as Engineer in Palamau, who has been residing separately from the family of the deceased. Another son, Kumar Nirav had been working in Lohardaga College who also living separately. His mother Jhalo Devi who was 80 years old in the year 2014 and died, who was deleted vide order dated 22.07.2024. Therefore, two sons and daughter were not dependent upon the deceased and had been residing separately having their own income, hence the surviving dependent was the only widow and 1/3rd income of the deceased should have been deducted for the personal expenses while the learned Tribunal had deducted 1/4th from the same. Further, the award has been assailed on the ground of quantum of compensation. The income, which was assessed by the learned Tribunal is based on perverse findings, it could have been assessed on the basis of average income since the income of three financial years has been adduced on behalf of the claimants. The learned Tribunal has based the income in the last month salary the same was wrong. Further, the interest had been awarded by the learned Tribunal that was 9% per annum which should have been 7.5% per annum. In view of the above, contended to allow the appeal and modify the amount of compensation.

9. Per contra, the learned counsel for the claimants vehemently opposed the contentions made by the learned counsel for the appellant and contended that all the claimants in the claim petition being the legal heirs of the deceased have been impleaded party and all are entitled to the compensation on account of death of deceased Arun Kumar. Therefore, the learned Tribunal has rightly deducted $1/4^{th}$ amount of the income for his personal expenses. So far as the computation of the income is concerned, the learned Tribunal has rightly has rightly computed the same and the same needs no interference. In view of the above, contended to dismiss the appeal.

10. I have heard the learned counsel for the parties and perused the materials available on record.

11. For disposal of this Miscellaneous Appeal, following points of determination is being framed:

> ***(i) Whether deduction for the personal expenses out of income of deceased is wrong?***
> ***(ii) Whether the basis of computation of income of deceased is wrong?***

<u>Point of Determination No.I & II:-</u>

11.1 Both these points of determination are co-related and maintained with the same evidence so both are jointly being disposed of by the common order.

11.2 In the claim petition itself, the legal heirs who were left by the deceased after his death were shown in the claim petition i.e. Smt. Sharda Devi, 51 years old, widow of the deceased; Sweta Agrawal, 33 years old, daughter of the deceased; Mohit Ranjan, 31 years old, son of the deceased; Kumar Nirav 29 years old son of the deceased and; Jhalo Devi, 80 years old, mother of the deceased.

11.3 On behalf of the claimant, **A.W.-1, Sharda Devi**, in her examination-in-chief, in affidavit has deposed that her husband was the head of department of Philosophy in Baldeo Sahu Degree College, Lohardaga. He was getting 72,788/- per month as salary and the expenses of the whole family was incurred by him. At the time of death, he was 58 years old and he was to superannuate at the age of 65 years. She has filed the salary certificate prior to the accident of the month of December 2013, January 2014, and February 2014. Her husband was income tax payee. The income tax return of the financial year 2011-12, 2012-13 and 2013-14 has been deposited by her. In cross-examination, this witness has stated that her daughter Sweta Goel had got married 9 years ago. After marriage, she has been residing in her in-law's house along with her husband. Her two sons namely, Mohit Ranjan and Kumar Nirav has also got married. Her son Mohit Ranjan is working as Engineer in Palamau and Kumar Nirav working in Lohardaga College. Her mother-in-law resides with her and another son and daughter-in-law reside at their working place. This statement was given by A.W.-1, Sharda Devi on 15.07.2017 and the accident, in which, her husband died was caused on 23.02.2014.

11.4 A.W.-2, Bipin Kumar, in his examination-in-chief has deposed that the deceased was a Professor in Baldeo Sahu Degree College, Lohardaga and was of the Head of Department of Philosophy. In cross-examination, this witness says that the deceased had two sons and one daughter. One son was Junior Engineer in Private Company and another has received the job on compassionate ground and the daughter of him has also got married. The wife of the deceased is also getting pension. The income returns of the year 2013-14 has been filed, in which, gross total income is shown Rs.10,91,148/- and the tax paid thereon is shown Rs.1,32,077/- while in the income tax return of the financial year 2012-13, the gross income is shown

Rs.6,62,220/- and income tax deductible there on is shown Rs.57,950/-.

12. On behalf of the appellant-Insurance Company in its written statement nowhere this plea has been taken that the deceased after his death has not left the legal heirs. Name of whose are shown in the claim petition to be not dependent upon him. Even on behalf of the Insurance Company no contrary evidence has been adduced to rebut the evidence adduced on behalf of the claimant in regard to the dependency of the legal heirs who were left by the deceased after his death.

13. Herein, it would be relevant that the daughter of the deceased Sweta Agrawal who were 33 years old on the date of accident in February, 2014 in regard to her, A.W.-1, Sharda Devi in her statement in the year 2017 has stated that nine years ago her daughter Sweta Agrawal was got married and had been residing at her in-law's house. **In view of the testimony of A.W.-1, Sharda Devi, Sweta Agrawal was not dependent upon the deceased**.

14. So far as his sons Mohit Ranjan and Kumar Nirav are concerned, **P.W.-1, Sharda Devi** in her statement stated that Mohit Ranjan is the Engineer and Kumar Nirav is doing job in the College. Both have got married **but on behalf of the Insurance Company in cross-examination this conclusion could not be drawn that when Mohit Ranjan got job as a Engineer and Kumar Nirav got job in the college and when both these sons of the deceased got married. Whether in the lifetime of deceased both the sons were employed and were married and residing separately? There is no such evidence on record. So far as Smt. Jhalo Devi, mother of the deceased is concerned, though during pendency of this appeal she died but at the time of death of deceased Jhalo Devi was also dependent upon him**. In view of lack of the evidence on record that Mohit Ranjan and

Kumar Nirav both the sons were employed and got married and residing separate from the deceased there being no such evidence for the same. **The averment made in the claim petition in regard to the dependency of both the sons upon deceased would go in favour of the claimants. As such, from the evidence on record, the deceased after his death left his widow, two sons and mother, who left his four dependents upon him after his death**.

15. In view of the judgment passed by the Hon'ble Apex Court in the case of ***Smt. Sarla Verma and Ors vs Delhi Transport Corporation and Anr.,*** reported in ***2009 AIR SCW 4992.*** **Paragraph No.14** reads as under**:**

> *"14.Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six."*

16. The deduction of 1/4th for personal expenses from the income which was assessed for dependent of the deceased as made by the learned Tribunal, the same is correct and needs no interference. On this point of determination, the case of appellant fails.

17. So far as the computation of income is concerned, from the impugned award, it is found that the learned Tribunal has given this finding that in her deposition **A.W.-1, Sharda Devi** has stated that **her husband was Head of Department of Philosophy in Baldeo Sahu Degree College, Loharda and he was getting salary Rs.72,788/- per month, from which, expenses of the family was maintained. She has filed the certificate dated 01.04.2014**

issued by the signature of Principal of Baldeo Sahu Degree College, Lohardaga which is marked Exhibit-A/1. In regard to the completion of time for retirement she has also filed the ITR of deceased marked Exhibit-9, 9/1 and 9/1, out of these three income tax returns, the income tax return for the assessment year 2013-14 was considered by the learned Tribunal to be relevant, in which the income tax return of the financial year 2012-13 the income is shown Rs.10,91,148/- per annum and after deduction of income tax Rs.1,32,079/-, the income is shown Rs.9,89,069/- per annum.

18. The submission made by the learned counsel for the appellant that the learned Tribunal should have assessed the income of deceased taking into consideration the income tax returns of last three financial years and on the basis of average income, the amount of computation should have been computed. **This submission made by the learned counsel for the appellant is not found tenable because the deceased was Professor in Baldeo Sahu Degree College, Lohardaga and was head of department of Philosophy. He was getting the salary along with other allowances just before the accident, in which, the death was caused. The basis of income would be the financial year of 2013-14, the average income of previous financial year cannot be the basis for computation of the amount of compensation**. The finding given by the learned Tribunal in computing the amount of compensation while basing the income of deceased of the very financial year 2013-14 as the death of deceased was caused in February, 2014. Therefore, the same finding given by the learned Tribunal bears no illegality and needs no interference.

19. So far as the interest on the compensation amount is concerned, which the learned Tribunal has awarded 9% interest, that 9% interest is not tenable **it could have been 7.5% per annum in view of the judgment** passed by the Hon'ble Apex Court in the case of ***National Insurance Company Vs. Mannat Johal,*** reported in ***(2019) 2 ACC 355*** Paragraph No.13 reads as under:

> *"13.The aforesaid features equally apply to the contentions urged on behalf of the claimants as regards the rate of interest. The Tribunal had awarded interest at the rate of 12% p.a. but the same had been too high a rate in comparison to what is ordinarily envisaged in these matters. The High Court, after making a substantial enhancement in the award amount, modified the interest component at a reasonable rate of 7.5% p.a. and we find no reason to allow the interest in this matter at any rate higher than that allowed by High Court."*

20. In view of the analysis of the evidence on record and also taking into consideration the submissions made by the learned counsel for the parties the instant Miscellaneous Appeal deserves to be partly allowed and partly dismissed.

21. Accordingly, the instant Miscellaneous Appeal is partly allowed and the impugned award dated 27.02.2019 passed by the learned P.O., M.A.C.T., Ranchi in Motor Accident Claim Case No.114 of 2014 is modified only to the extent of interest payable on the amount of compensation as awarded by the learned Tribunal from 9% to 7.5% per annum. The rest of the award shall remain same and is confirmed.

22. Let the learned Tribunal be communicated in regard to this judgment. The statutory amount, if any, be sent back to the learned Tribunal.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi
Dated: the 3rd December, 2024,
Madhav/- **A.F.R.**